

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOHAMMED ABDELSALAM,)
Plaintiff,) 2:01-cv-1575-GEB-JFM
v.) FINAL PRETRIAL ORDER
UNITED INSURANCE COMPANY OF)
AMERICA,)
Defendant.¹)

)

The final pretrial conference scheduled for August 21, 2006, is vacated since the parties' Joint Pretrial Statement ("JPS") indicates this Final Pretrial Order should issue.

I. JURISDICTION AND VENUE

Jurisdiction is based on 28 U.S.C. § 1332. Venue is undisputed.

II. JURY/NON-JURY

All issues shall be tried to a jury.

¹ The caption has been amended to reflect the dismissals of Defendants Unum Life Insurance Company on January 24, 2003, and Unitrin, Inc. on February 23, 2006.

1 III. DISPUTED FACTUAL ISSUES

2 1. Whether plaintiff's employment with United
3 terminated prior to his alleged onset of disability of April 23,
4 2000.

5 2. Whether United intentionally communicated an
6 incorrect date of plaintiff's termination of employment to Unum
7 Life Insurance Company of America.

8 3. Whether any communication by United to Unum
9 Insurance Company of America relating to the termination date of
10 plaintiff's employment was for the purpose of disrupting a
11 contractual relationship between plaintiff and Unum.

12 4. Whether Unum relied on information provided by
13 United regarding the termination date of plaintiff's employment in
14 making any decision with regard to provision of benefits under a
15 long-term disability insurance policy.

16 5. Whether United's communication of any information to
17 Unum in relation to the termination date of plaintiff's employment
18 was with knowledge of the existence of plaintiff's long-term
19 disability insurance policy with Unum.

20 6. Whether plaintiff and a third party (long term
21 disability insurance carrier, "Unum") were in an economic
22 relationship that probably would have resulted in an economic
23 benefit to plaintiff.

24 7. Whether defendant United knew of the relationship
25 between plaintiff and the long term disability insurance carrier.

26 8. Whether United intended to disrupt the relationship
27 between plaintiff and his long term disability insurance carrier.

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1 9. Whether United engaged in wrongful conduct through
2 misrepresentation or fraud.

3 10. Whether plaintiff Mohammed Abdelsalam was harmed,
4 and

5 11. Whether defendants' wrongful conduct was a
6 substantial factor in causing plaintiff's harm.

7 12. The nature and extent of harm to plaintiff as a
8 result of United's alleged wrongful conduct.

9 13. Whether any wrongful communication by United was
10 made by an officer, director or managing agent for purposes of
11 plaintiff's punitive damages claim.

12 14. Whether United authorized or ratified the wrongful
13 conduct of its employees for which the damages are awarded.

14

15 IV. RELIEF SOUGHT

16 Plaintiff seeks general, special and punitive damages in
17 connection with defendant's interference with prospective economic
18 relations.

19 Defendant seeks dismissal of plaintiff's claims and
20 judgment entered thereon.

21

22 V. POINTS OF LAW

23 A. The parties have identified the following points of
24 law:

25 1. The elements of a cognizable claim for
26 intentional interference with prospective economic relations (CACI
27 2202.)

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1 2. The applicable legal standard(s) regarding the
2 cause of any damages and the nature and extent of any damages
3 available to Plaintiff.

4 B. Trial briefs shall be filed no later than twenty
5 (20) court days prior to the trial commencement date. A joint or
6 partial joint trial brief is permitted. All legal positions
7 briefed in the trial brief shall be supported with case and
8 applicable statutory authority. See Local Rule 16-285. If
9 separate or partial separate trial briefs are submitted, responding
10 briefs, if any, shall be filed with the Court no later than five
11 (5) court days prior to trial. **The trial brief(s) must include "a**
12 **summary of points of law, including reasonably anticipated disputes**
13 **concerning admissibility of evidence, legal arguments, and**
14 **citations of authority in support thereof."² Local Rule 16-**
15 **285(a)(3).**

16
17 VI. WITNESSES

18 A. Plaintiff expects to call as witnesses, either in
19 person or by deposition, some or all of the persons listed in
20 Exhibit A, attached hereto.

21 B. Defendant expects to call as witnesses, either in
22 person or by deposition, some or all of the persons listed in
23 Exhibit B, attached hereto.

24 C. Each party may call a witness designated by the
25 other.

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28 ² If an evidentiary issue is brief, an in limine motion
need not be included in the trial brief.

1 D. No person, other than those named on these witness
2 lists, will be permitted to testify unless:

3 (1) The party offering the witness demonstrates that
4 the witness is for the purpose of rebutting evidence which could
5 not reasonably be anticipated at the pretrial conference; or

6 (2) The witness was discovered after the pretrial
7 conference and the proffering party makes the showing required in
8 "E", below.

9 E. If a witness is discovered after the pretrial
10 conference, counsel for the party offering the witness shall
11 promptly inform the Court and opposing parties of the existence of
12 the unlisted witness so that the Court may consider at trial
13 whether the witness shall be permitted to testify. The witness
14 will be not be permitted to testify unless:

15 (1) The witness could not reasonably have been
16 discovered prior to pretrial;

17 (2) The Court and opposing counsel were promptly
18 notified upon discovery of the witness;

19 (3) If time permitted, counsel offered the witness
20 for deposition; and

21 (4) If time did not permit, a reasonable summary of
22 the witness' testimony was provided to opposing counsel.

23
24 VII. EXHIBITS

25 A. Plaintiff intends to offer in evidence the exhibits
26 described in Exhibit C, attached hereto.

27 B. Defendant intends to offer in evidence the exhibits
28 described in Exhibit D, attached hereto.

1 C. No other exhibits will be permitted to be introduced
2 unless:

3 (1) The party seeking to use the unlisted exhibit
4 demonstrates that the exhibit is being used to rebut evidence which
5 could not reasonably have been anticipated at the pretrial
6 conference; or

7 (2) The unlisted exhibit was discovered after the
8 pretrial conference and the offering party makes the showing
9 required in paragraph "D", below.

10 D. Any party proposing to introduce an exhibit which was
11 discovered after the pretrial conference shall promptly notify the
12 Court and opposing counsel of the existence of such exhibit. The
13 Court will not permit any such exhibit to be introduced unless it
14 finds:

15 (1) That the exhibit could not reasonably have been
16 discovered prior to the pretrial conference;

17 (2) The Court and counsel were promptly informed of
18 the exhibit's existence; and

19 (3) That the offering party has delivered a copy of
20 the exhibit to opposing counsel, or, if the exhibit may not be
21 copied, that the offering counsel has made the exhibit reasonably
22 available for inspection by opposing counsel.

23 E. Plaintiff's exhibits shall be numbered and marked
24 with colored stickers provided by the Court while Defendant's
25 exhibits shall be designated by alphabetical letter also marked
26 with colored stickers provided by the Court. To obtain stickers,
27 parties should contact the Clerk of Court at (916) 930-4000.

1 The parties are directed to exchange with each other, at
2 least twenty (20) court days prior to trial, copies of all of their
3 respective exhibits, marked with exhibit stickers provided by the
4 Court. Within five (5) court days after receipt and examination of
5 the exhibits, each party shall file with the Court and serve upon
6 opposing counsel objections, if any, to the exhibits, referencing
7 the exhibits as marked by exhibit sticker and specifying the basis
8 for each objection.³ Failure to exchange exhibits as ordered could
9 result in the exhibit not being used at trial and/or the imposition
10 of sanctions. The failure to make objections in the manner
11 prescribed by this section shall constitute a waiver of objections.
12 A party seeking to admit into evidence an exhibit to which no
13 objection was made must identify said exhibit for the record and
14 then move it into evidence.

15 Counsel shall produce all exhibits to the Clerk's Office
16 on the Friday before the before trial date, no later than 4:00 p.m.
17 At that time, the parties shall also furnish the Court with a copy
18 of each exhibit, unless the exhibit is physically incapable of
19 being reproduced. Failure to produce exhibits as ordered could
20 result in waiver of the right to offer those exhibits. Each party
21 submitting exhibits shall furnish a list to the Court, the
22 courtroom deputy and opposing counsel itemizing the exhibits.

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24 VIII. FURTHER PREPARATION FOR USE OF DISCOVERY DOCUMENTS

25 A. It is the duty of counsel to ensure that any
26 depositions which are to be used at trial for any purpose shall

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28 ³ The parties have leave to file joint exhibits. The above
procedure is designed for separate exhibits.

1 have been filed with the clerk, and counsel are cautioned that a
2 failure to discharge this duty may result in preclusion of the use
3 of the unfiled depositions or in the imposition of such other
4 sanctions as the Court deems appropriate.

5 B. No later than twenty (20) court days before the trial
6 commencement date, counsel for each party shall serve on the other
7 parties a statement designating all answers to interrogatories and
8 all portions of depositions (except for passages to be used solely
9 for refreshing recollection, impeachment or rebuttal). No later
10 than ten (10) court days before the trial commencement date,
11 counter-designations of other portions of these discovery documents
12 may be served. No later than five (5) court days before trial, the
13 parties shall file and serve any preserved evidentiary objections
14 to any designated discovery, or said objections are waived.

15

16 IX. FURTHER DISCOVERY OR MOTIONS

17 Pursuant to the Court's Pretrial Scheduling Order, all
18 discovery and law and motion was to have been completed prior to
19 the date of the final pretrial conference. That order is
20 confirmed. The parties are, of course, free to conduct any
21 additional discovery they desire pursuant to informal agreement.
22 However, any such agreement will not be enforceable in this Court.

23

24 X. AGREED STATEMENT

25 The parties shall submit a short, jointly-prepared
26 statement concerning the nature of this case that can be read to
27 the jury at the commencement of trial. The statement shall be
28 provided to the Court no later than ten (10) court days before the

1 commencement of trial. If the parties fail to do this, they may be
2 required to give their respective opening statements before voir
3 dire. Separate statements shall be submitted if agreement is not
4 reached.

5

6 XI. SEPARATE TRIAL OF ISSUES

7 The trial will be conducted in two phases: liability and
8 punitive damages. If the jury finds punitive damages are
9 recoverable in the liability phase, trial on the amount of punitive
10 damages will immediately occur. During the first phase of the
11 trial, the jury will be given a liability instruction on punitive
12 damages along with the other closing instructions and a verdict
13 form which will include the liability question on punitive damages.
14 If the answer is yes, then evidence pertinent to the amount of
15 punitive damages would be presented in the second phase of the
16 trial, following which the parties would present closing argument
17 on that issue and a jury instruction would be given. The jury
18 would then deliberate on the issue and fill in a punitive damages
19 verdict form.

20

21 XII. JURY INSTRUCTIONS, VOIR DIRE, AND VERDICT FORMS

22 A. The parties are to prepare jury instructions, in the
23 manner specified in paragraph B below. Counsel shall tailor all
24 general instructions to the facts and issues in suit.

25 B. Counsel are directed to confer and to attempt to
26 agree upon a joint set of jury instructions and verdict forms.

27 C. All instructions, both general and specific, shall
28 be submitted in the exact numerical order counsel desires them

1 given to the jury and shall be tailored to the facts and issues in
2 suit.

3 The joint set of instructions and verdict forms shall be
4 filed with the court clerk fifteen (15) court days prior to the
5 date of the trial. As to instructions on which there is dispute,
6 the parties shall adhere to the following procedure: 1) the party
7 offering the disputed instruction(s) shall submit the
8 instruction(s) as its proposed jury instruction(s), shall submit
9 authority in support of the proposed instruction(s) and shall
10 number the disputed instruction(s) in a manner that shows where
11 each disputed instruction should be placed in the tendered agreed
12 upon instructions. The contested instruction(s) and supporting
13 authority shall be filed with the joint set of instructions fifteen
14 (15) court days prior to the date of the trial; 2) the party
15 opposed to the contested instruction(s) shall file opposing
16 authority ten (10) court days prior to the date of the trial.

17 D. All instructions shall be, to the extent possible,
18 concise, understandable, and neutral statements of law. They shall
19 be prepared in accordance with Local Rule 51-163. Ninth Circuit
20 Pattern Instructions are preferred.

21 E. It is the parties' responsibility to ensure that
22 jury instructions are submitted on all issues preserved for trial
23 in accordance with the schedule set forth above. Pursuant to Local
24 Rule 51-163, instructions not presented in accordance with this
25 Order will be refused unless it is shown either (1) that the
26 necessity for the request arose in the course of trial; the
27 instructions could not reasonably have been anticipated prior to
28 trial from the Final Pretrial Order; and the request for such

1 additional instructions is presented to the Court as promptly as
2 possible; or (2) that the refusal to give such instructions would
3 constitute manifest injustice under Rule 16(e).

4 F. Most of the examination of prospective jurors is
5 conducted by the Court. The parties are directed to meet and
6 confer and attempt to agree upon a joint set of proposed voir dire
7 questions. The joint set of voir dire questions shall be filed
8 with the Court fifteen (15) court days prior to the date of the
9 trial. Parties may also submit proposed voir dire questions which
10 are disputed. Disputed voir dire questions shall be filed with the
11 Court fifteen (15) court days prior to the date of the trial and
12 shall be accompanied by an explanation as to the need for the
13 question and supporting case authority when available. The
14 opposing party shall respond with reasons for the opposition and
15 any supporting case authority no later than ten (10) court days
16 prior to the date of trial. Each side is granted twenty (20)
17 minutes to conduct voir dire following the Court's examination of
18 prospective jurors.

19 At the time of electronically filing the jury
20 instructions and verdict forms, counsel shall also submit a copy of
21 the sanitized joint jury instructions, the sanitized disputed jury
22 instructions, and the joint verdict forms to the Court by email to
23 geborders@caed.uscourts.gov in accordance with L.R. 51-163(b) (1).

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1 XIII. USE OF STRUCK JURY SELECTION SYSTEM

2 Eight jurors will be impaneled. The "struck jury" system
3 will be used to select the jury.⁴ At the beginning of the voir
4 dire process, approximately eighteen prospective jurors, randomly
5 selected by the Jury Administrator, will be seated for voir dire.
6 The order of the jurors' random selection is reflected by the order
7 in which they will be seated. The first randomly selected juror
8 will be in jury seat number one, which is at the extreme right-hand
9 side of the jury box in the top row as the jury box is viewed from
10 the well of the courtroom. The eighth juror will be in the eighth
11 seat. The ninth selected juror will occupy the seat located at the
12 extreme right-hand side of the jury box in the bottom row. The
13 fifteenth seat will be in the left-hand side of that row. Three
14 chairs will be placed in front of the jury box. The sixteenth
15 juror will occupy the seat on the right and the eighteenth juror
16 will occupy the seat on the left. The first eight jurors on a
17 list, which shall be given to counsel, will constitute the petit
18 jury unless one or more of those eight is excused for some reason.
19 Assuming that the first and fifth jurors on the list are excused,
20 the second listed juror becomes the first, and the other jurors'
21 numbers are changed accordingly, with the ninth juror on the list
22

23

24 ⁴ As explained in United States v. Blouin, 666 F.2d 796,
25 798 (2d Cir. 1981), "the goal of the 'struck jury' system is to
26 whittle down an initially selected group . . . [to the amount of
jurors] who will serve as the petit jury." The selected group
27 consists of the jurors who will hear the case, plus the number of
jurors required to enable the parties to use the combined number of
peremptory challenges allotted to both sides for striking jurors
from the group. Typically extra jurors are included in the select
group in the event the minimum amount of jurors required for the
"struck system" is reduced "for cause" or some other reason.

1 becoming seventh on the list; however, the jurors continue to be
2 identified by their original numbers.

3 Following the voir dire questioning, each side will
4 exercise its three allowed peremptory strikes.⁵ A copy of the
5 "strike sheet" which will be used is attached to this Order.
6 Generally, the potential jurors are given a break for the amount of
7 time the parties estimate it will take them to exercise peremptory
8 strikes. Therefore, before the striking process begins, the
9 parties are requested to provide an estimate of how long it will
10 take to exercise their peremptory strikes so the potential jurors
11 can be allowed to take a break for that amount of time. Peremptory
12 strikes will be exercised silently, by passing the strike sheet
13 between the parties. To use a strike, write the seat number of the
14 juror above the line where the strike is required to be
15 designated.⁶ A party who does not use a strike waives any further
16 right to exercise that strike and is required to reflect this
17 waiver by writing the word "pass" on the strike sheet where the
18 strike was supposed to have been exercised.

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20

21 ⁵ During the questioning, the attached Query Re Excuse
22 Potential Jurors form could be given to the parties to determine if
23 a particular juror should be excused. The attached for cause form
will also be used.

24 ⁶ For example, assuming Plaintiff elects to strike the
25 juror in seat number 6, that strike will be exercised and then the
26 strike sheet is give to defense counsel. Assuming defense counsel
then strikes the juror in seat 4, the first line of the strike
sheet will appear as follows:

27 Plaintiff 1 6

Defendant 1 4

28 Defense counsel would then give the strike sheet back to Plaintiff
so she could exercise her second strike.

XIV. TRIAL DATE

2 Trial to a jury will commence on November 14, 2006.⁷ A
3 trial day will commence at 9:00 a.m. and will adjourn at
4 approximately 4:30 p.m. At the first phase of the trial, each side
5 has fifteen (15) minutes within which to make an opening statement
6 to the jury and sixty (60) minutes within which to make a closing
7 argument. If trial proceeds to the second phase, each side has
8 fifteen (15) minutes within which to make a closing argument on the
9 punitive damage issue. Counsel are to call Shani Furstenau,
10 Courtroom Deputy, at (916) 930-4114, one week prior to trial to
11 ascertain the status of the trial date.

XV. OBJECTIONS TO PRETRIAL ORDER

14 Each party is granted ten (10) days from the date of this
15 Order to file an objection to same. If no objection is filed, this
16 Order will become final without further order of this Court.

IT IS SO ORDERED.

18|| Dated: August 17, 2006

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge

7 The parties are required to meet and confer about the
28 length of the trial and to file a document no later than 20 court
days before trial in which the length of trial is estimated.

STRIKE SHEET

Plaintiff 1_____

2_____

3_____

Defendant 1_____

2_____

3_____

Query re Excuse Potential Juror

Do you Agree that Juror No. ____ should be excused for the reason stated by the juror or for any other reason? (Check applicable box below)

Plaintiff's Attorney

Defendant's
Attorney

RESPONSE:

Yes No

Yes No

Whether Jurors Present During Exercise of Peremptory Challenges

Can the jury be excused for the amount of time it will take to exercise peremptory challenges? (Set forth response in box below)

	Plaintiff's Attorney	Defendant's Attorney
RESPONSE:	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No

How long do you estimate it will take you to exercise peremptory challenges? (Set forth minutes in box below)

	Plaintiff's Attorney	Defendant's Attorney
MINUTES:	<input type="checkbox"/>	<input type="checkbox"/>

FOR CAUSE DOCUMENT
Plaintiff's Counsel

If you have challenges for cause, state the seat number of the juror involved and a brief explanation of the reason for the challenge.

Seat _____

Explanation: _____

List seat numbers of other for cause challenges: _____, _____,
_____, _____, _____, _____, _____, _____, _____, _____, _____, _____, _____.

CHECK THIS BOX IF YOU HAVE NO CHALLENGES FOR CAUSE:

Signed: _____

FOR CAUSE DOCUMENT
Defendant's Counsel

If you have challenges for cause, state the seat number of the juror involved and a brief explanation of the reason for the challenge.

Seat _____

Explanation: _____

List seat numbers of other for cause challenges: _____, _____,
_____, _____, _____, _____, _____, _____, _____, _____, _____, _____, _____.

CHECK THIS BOX IF YOU HAVE NO CHALLENGES FOR CAUSE:

Signed: _____